part of the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding, a treaty erecting an international court might provide that the judgments of that court against any nation should be binding upon all the citizens of that or any other nation, in all controversies arising in its courts, and in that way possibly the analogy of the Federal system might be worked out. But at the present time, these proposed treaties deal only with controversies between states as sovereignties, and the analogy of our Federal system to such controversies is a strained and misleading one.

There is a great deal of sense and a great deal of nonsense talked about international courts. Long before controversies reach a point where they form the appropriate consideration of either courts or wars, there is an area of discussion, debate, and misunderstanding that can be removed only by good sense, by the exchange of candid opinion, by having some place where the representatives of the powers concerned may sit down and discuss with each other the merits and demerits of these questions. No convention establishing an international court alone will effectively deal with the fundamental question of providing for the extension of the rule of justice alike over the great and the small nations, and the subordination of the rule of force among the nations of the earth.

Law the Prerequisite of an International Court

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TAKEN in their logical succession, the problem of an international court presents the following questions: First, must the parties to a dispute be compelled to refer the dispute to the court when it can not be settled between them by direct negotiation? In other words, shall the court have compulsory jurisdiction over all disputes which threaten to result in armed conflict, and if so, by what means are the parties to be brought to court? Secondly, what is to be the composition or organization of the court before which the dispute is to be tried? Thirdly, what law is to be applied to the settlement of the case? And, fourthly, how is the judgment or award of the court to be made effective? Of these four questions the one which more immediately concerns us is that of conferring compulsory jurisdiction upon the court, although that question is itself intimately tied up with the further question of the composition of the court and the law to be applied by it.

ARBITRATION IN THE PAST

The question whether the international court should be given compulsory, or, to use the better term, obligatory, jurisdiction, can best be answered after a survey of the failures of international arbitration in the past. It is only by understanding how and why the optional arbitration hitherto recognized has failed, that we can realize both the difficulties involved in compulsory arbitration and the urgent need of meeting those difficulties frankly and directly. Now if we look over the record of arbitration in the past, not the kind of courts that have been set up but the extent of the obligation to arbitrate, we find that the great powers have never been willing to agree

to arbitrate all disputes without exception. They have always put in some qualification to the agreement. When the Second Hague Conference met in 1907, an effort was made to secure an agreement to arbitrate at least a limited group of international disputes. Such an agreement could not be secured. The most that could be obtained is written down in the Final Act of the Peace Conference. The assembled contracting powers are unanimous in approving of "the *principle* of compulsory arbitration." They are unanimous in believing that certain disputes "*may* be submitted to compulsory arbitration." Again, in the first convention adopted by the conference, it is affirmed that it is "desirable" to submit such disputes to arbitration. That is as far as they went, and if the United States would have been willing to go a short step further, we were far from being ready to arbitrate all disputes. We would not pledge ourselves any more than the others in respect to an unqualified obligation.

Now, if we turn from what the Hague Conference attempted or failed to do in 1907, and look at the record of our own arbitration treaties, we find that same evasion, at every turn, of compulsory or obligatory arbitration. I do not condemn our country. I do not say that more should have been done. I only want to emphasize the fact that we have never been willing to arbitrate all disputes. The Root Treaties of 1908 provided that the contracting parties should agree to arbitrate legal disputes and disputes relating to the interpretation of treaties, with the proviso, however, that they should not involve the honor or the vital interests of the contracting parties. At that time there was a dispute between the United States and Columbia, and if the Columbian Minister had gone to the State Department and inquired whether under the new arbitration treaties the United States was now ready to arbitrate the dispute over Panama, he would have been politely informed either that the question was not a legal one or that it touched the honor and the vital interests of the United States.

The next treaties negotiated were the Taft Treaties of 1911. These treaties made a distinction between justiciable and non-justiciable disputes, justiciable disputes being those which might by reason of their character be submitted to arbitration, and non-justiciable disputes being such as were not suitable for arbitration; and under that technical phraseology we again left the door open to escape from a demand that we arbitrate disputes we did not wish to arbitrate. Again in 1913 Mr. Bryan negotiated the Bryan Treaties, which, perhaps rather wisely, do not attempt to pledge the United States to arbitrate, but do attempt to pledge us unqualifiedly to submit all questions at least to investigation and report. Beyond that we were not ready to go.

CAUSE OF ITS FAILURE

Such are the facts. The United States has never been willing to arbitrate all disputes without question. I do not say we have acted wrongly, I merely want to state a fact before going on to give reasons. Now, why have we been willing to arbitrate petty little cases, suits for damages, fishing rights along the Newfoundland Banks, but, with a few notable exceptions, unwilling to arbitrate the questions which really count in the intercourse of the nations and which are the underlying causes of war? It has been said, because there was never a court before which they could be brought. Now I do not doubt that it would have helped somewhat if there had been an international court in the past, permanent

in character, such as Dr. Scott has described.[1] It might have helped on some occasions to bring disputes to a judicial decision; but with the best permanent court in the world we would not have arbitrated the Panama tolls dispute. We said the case was not arbitrable, and the presence of a court would not have made us change our decision. We would not arbitrate the dispute with Columbia, and no court, however perfect, would have brought us to it; and we would not arbitrate any of the important questions coming under the Monroe Doctrine.

What is the matter then? The matter is, of course, the lack of a definite law. Unless there is clear law on the subject a nation is not going to the court. There is no true international law. We speak of an international law, but it does not touch the real things of life. There are a lot of diplomatic courtesies provided for, and there are many valuable provisions relating to the extradition of fugitive criminals, and matters like that, but international law does not touch the real interests of nations. There is no guarantee in existing international law of the life, liberty and property of a nation. What is the result? As there is no guarantee of the safety of the life of a nation, every nation undertakes to protect its own life, its own existence, and, therefore, we have a Monroe Doctrine which means that in the interests of our own existence—and it is primarily a selfish doctrine, we might as well acknowledge that—in the interests of our own existence we are not going to have the European system over here.

We are not the only nation that has a Monroe Doctrine. Great Britain has a Disraeli Doctrine or a Balfour Doctrine—call it by whatever name—which means that, in matters relating to trade routes of the Mediterranean, Great Britain has a special interest which she will not submit to arbitration. The French have a Delcassé, or a Poincaré Doctrine, which relates to Morocco and other special French interests, and the Spaniards have their Monroe Doctrine, and the Italians have what I might call their Sonnino or Giolitti Doctrine, and the Greeks have their Venizelos Doctrine, and over in the Far East the Japanese have their Ishii Doctrine, which means that Japan's interests are the first consideration in that part of the world—a claim partially recognized by the United States in the recent Lansing-Ishii agreement.

RIVALRIES OF INTERNATIONAL TRADE

Now, if we turn from the protection of national rights to other important questions, such as international trade, for example, we find that the nations are engaged in a trade rivalry, an unbridled competition that is absolutely lawless. We have no inter-state commerce law for the nations. We have such a law for the forty-eight states in the union of the United States, but we have no international commerce law, and, consequently, the nations are struggling to get into the markets of the world, struggling to get concessions, struggling to get possession of the indispensable raw materials of industry. In the absence of an international law of commerce no nation is going to go to an international court and arbitrate the chance of getting certain valuable rights. Take the following illustration: Oil has become an essential factor of modern industry and of modern merchant marines and navies. Each nation is seeking to obtain possession of new oil lands for future exploitation when its present resources are exhausted. Only last November Secre-

[1] *See* page 100.

tary Colby sent a sharp note to Great Britain protesting against any attempt on the part of that country to use its mandate over Mesopotamia as a means of obtaining exclusive control over the oil of that region. Here is a new issue coming up between the nations, and until some general rule is adopted there is no use talking about international courts of obligatory jurisdiction. We will not go to court on that issue. There must be a law first.

I could mention other things that are not settled. It is not settled by any rule of international law what are domestic questions, and in the absence of an agreement on that subject we find the reservation Mr. Lodge tacked to the Peace Treaty to the effect that the United States would not submit to the jurisdiction either of the Court or of the League a list of questions affecting domestic policies. Naturally, as things stood, we were not ready to submit to a court the question of Japanese immigration. Before we give to any court compulsory jurisdiction we must decide what the domestic rights of a country are; and when there is a law it may be possible to get nations to come to court.

LAW OR ANARCHY

Such is the record of failure in the past. Now let us see what the real need is. The real need of the nations is to submit all matters of an international character to a rule of law. A law must be created for all the subjects that come up in the relations of the nations. Until that is done there is no hope, not only of obligatory arbitration, but no hope of peace in the world as regards the matters that are considered by the nations as vital to their welfare. Each nation is the judge in its own case. There is only one word to describe such a situation, and that is anarchy. We like to dub as anarchists a variety of bearded people who are opposed to ordered government, but the anarchy that prevails among the nations surpasses theirs. There is anarchy among the nations so long as each nation is the judge in its own case. When the Panama tolls question came up in 1914 were we the judge in our own case? Of course we were. We heard it declaimed in the Senate that the Canal was ours, we built it, and we would do what we please. That is being the judge in our own case, and that I hold is international anarchy.

Moreover, each nation, as things now stand, is not only the judge in its own case, but each nation undertakes to enforce its own claims for itself—to maintain its rights by its own armed force. It was asserted by our President at a naval review not long ago that the United States wants only that which is rightfully its own, but means decidedly to have that. But are we never to learn that every nation stands only for its rights as it sees them? As things are at present each nation is arming for the defense of its own rights, and that is anarchy. It is the anarchy that prevailed in California in the early gold-digging days when each man carried a pistol in his hip pocket, and the man who could draw first and shoot the quickest and most accurately enforced his rights as he saw them. That is the anarchy among the nations, and we are fast going back to the condition of rival competitive navies which prevailed before the war.

COLLECTIVE RESPONSIBILITY THE SOLUTION

There is only one answer to that situation. We must substitute for the right of each nation to be the arbiter in its own case, and the right of each nation to enforce its own claims, and for isolated individual action,—we must

substitute collective responsibility. The keynote of the solution of our international problems is collective responsibility. That is the principle underlying all law. Are we citizens of the state of Pennsylvania at liberty to interpret the law for ourselves, to be the judges in our own case? Are we at liberty to enforce the law of Pennsylvania, or rather our conception of the law, and maintain our rights as we see them in a very one-sided way?

What underlies the law of Pennsylvania and the law of the United States? It is the collective responsibility of all citizens for the observance of the law, so that violation of law by any one citizen brings not the injured party forward, who may not be able to protect himself, but brings the whole community forward, and the community at large demands that justice be done according to law. Our laws are not perfect; everybody knows they are not. Our courts are not perfect. Lawyers know it only too well. When a lawyer loses a case, what does he say? He says that the judge is a poor judge, that he does not know the law—that is putting it in a very mild form. When he goes to court next day and wins his case, he comes back and forgetting his abuse of yesterday he declares, "Fine Judge, that man. He knows the law." The courts are not perfect. The courts make mistakes, but it is better to have a court and have the law enforced impartially, and as far as possible justly, than for each man to be the judge in his own case and to take the law in his own hands.

EXAMPLE OF THE UNITED STATES

There is no doubt, therefore, about the desirability of law as against the anarchy of individual self-help within the boundaries of the state. The only question is, can we get such a law among the nations? Is it possible to frame a comprehensive rule of conduct which will cover all the subjects of international conflict? There is the example of the United States to show us that the task is not inherently impossible. Not that it is feasible, or even desirable under present conditions, to set up so close a league as is the union of the United States. It is well to have ideals but it is also well to keep our feet on the ground and know what can be done. If men denounced the League of Nations because it went too far, there would have been an out-cry all over the country against any league so close as is the league of the United States. It is well, however, to comfort ourselves by studying the records of history. Some day, in spite of differences of race, language and culture, the nations may be able to form as close a union as ours is, if the needs of the world demand it. Remember that in 1787, when our league of the United States was formed, there were good and lofty patriots who rose up and denounced that league, and none denounced it more vigorously than an orator who stirred the country in the days of the Revolution. Patrick Henry stood up in the convention of Virginia, when it was a question of ratifying the Constitution of the United States, and used similar expressions to that of "super-government" we heard last summer. Patrick Henry would have none of the Constitution of the United States. It encroached on the sovereignty of the state of Virginia. It did encroach on the sovereignty of Virginia, and it is well that it did; but Patrick Henry, whose emotional imagination was quite as fervid as that of a certain Senator in the United States Senate last summer—the Senator who saw our boys dying in the marshes of Hungary and climbing the steep peaks of the Himalayas—Patrick Henry saw, I fancy, the Virginia boys dying

in the sands of New Jersey and climbing the steep peaks of the Alleghanies. And by a coincidence it did happen that Virginians were among the troops called out by Washington to suppress the Whiskey Rebellion in 1794.

In spite of all the divergencies between the thirteen states whose representatives met here in Philadelphia at the Constitutional Convention, in spite of all their differences, they realized that they had a dominant common interest and they succeeded in subordinating to it their separate individual interests. Curiously enough one of the Articles of the Constitution contains a provision almost identical with Article X of the League of Nations, and that is Article IV in which the United States guarantees to each state a republican form of government and guarantees to protect them against invasion. That came pretty close to Article X, and local patriots of 1787 naturally rebelled at the thought of having to go up and fight Massachusetts to keep Massachusetts from attacking Connecticut. Happily the nations do not need to create so close a union as is the union of the United States.

ENERGETIC ACTION NEEDED

There are great difficulties in international organization. I do not minimize them. I do not say that the problem of international organization is an easy one. I think, as Mr. Smith[2] has said, the problem of framing an international law is almost an insuperable problem. It is a problem we might well shrink from, except for this fact, that it must be faced. When mankind is crying for a solution that will save it from impending disaster, when the civilization of the western world is at stake, it is not the part of resolute men to talk of difficulties. The thing to do is to try every expedient that gives promise of success. When a man is dying of a cancerous growth in his flesh you do not debate whether it can be cured. You call in all the surgeons and doctors that your money will afford and you put them on the case to try and get this cancer out of the man's flesh, to try and get this poison out of his blood—you must save his life.

Now, the world needs international organization so desperately that the statesmen of the world must get down to the problem, and I do not feel that we are getting down to the problem when we merely set up another court. I think that is important, but I think we have got to go a step further. We have got to frame a law, we have got to bring the nations together in assemblies—I do not like to use the word "league" because it is apt to arouse people's tempers—you have got to get the nations together in an assembly and frame a law, and until you have that law you can not get cases before the court, and if you do not get cases before the court there are going to be new wars. Sacrifices will have to be made by individual states, especially by the larger and more powerful ones; but they are sacrifices which will be repaid a hundred-fold when the final harvest comes in.

Is our statesmenship bankrupt? Have we really no men of constructive genius among us? Have we none equal to the fathers of the American Constitution, who met here in Philadelphia and with all the divergencies between them—and there were many—nevertheless succeeded in framing a constitution to bring order out of the disorder and, indeed, out of the anarchy that prevailed in this country before we got our Constitution. I trust the world is not bankrupt of statesmanship in the presence of a similar urgent need.

[2] *See* page 107.